



EB-2011-0076
EB-2011-0077
EB-2011-0078

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B; and in particular sections 36.1(1), 38(1), 40(1), 90(1), thereof;

AND IN THE MATTER OF an application by Tribute Resources Inc. for an Order designating the areas known as the Stanley 4-7-XI Pool and the Bayfield Pool, in the County of Huron, as gas storage areas;

AND IN THE MATTER OF an application by Tribute Resources Inc. for authority to inject gas into, store gas in and remove gas from the areas designated as the Stanley 4-7-XI Pool and the Bayfield Pool and to enter into and upon the lands in the said areas and use the land for such purposes;

AND IN THE MATTER OF an application by Tribute Resources Inc. to the Ministry of Natural Resources for a licence to drill wells in the said areas;

AND IN THE MATTER OF an application by Bayfield Pipeline Corp. for an Order granting leave to construct natural gas pipelines in the County of Huron and in the County of Middlesex.

BEFORE: Cynthia Chaplin
Vice Chair and Presiding Member

Paula Conboy
Member

DECISION AND ORDER ON COST AWARDS
March 13, 2013

Background

Tribute Resources Inc. and Bayfield Resources Inc., on behalf of Huron Bayfield Limited Partnership and Bayfield Pipeline Corp. (“Tribute”) filed applications with the Ontario Energy Board (the “Board”) on April 20, 2011, and amended on August 4, 2011, under sections 36.1(1), 38(1), 38 (3), 40(1) and 90(1) of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B (the “Act”). The applications approvals would allow Tribute to develop natural gas storage pools in the County of Huron and in the County of Middlesex Ontario (the “Projects”). The Bayfield and Stanley 4-7-XI natural gas storage pools (collectively referred to as the “Pools”) have a capacity of approximately 10 billion cubic feet with a planned in-service date 2016. The Projects include the construction and operation of a transmission pipeline to connect the Pools with Union Gas Limited’s (“Union”) pipeline system.

The applications are organized into four Board Files as follows:

- a. Development of Stanley 4-7-XI Pool (Board File No. EB-2011-0076)
- b. Development of the Bayfield Pool (Board File No. EB-2011-0077)
- c. Leave to Construct a Natural Gas Pipeline (Board File No. EB-2011-0078)
- d. Request for Determination of Compensation (Board File No. EB-2011-0285)

The application related to compensation EB-2011-0285 has been held in abeyance.

The applications EB-2011-0076, EB-2011-0077 and EB-2011-0078 was heard as a single proceeding.

On December 21, 2012, the Board issued its Decision approving Tribute’s applications and setting out the process for intervenors eligible for cost award to file their cost claims and to respond to any objections raised by Tribute.

The following intervenors were granted cost award eligibility status: Huron County Federation of Agriculture (“HCFA”); McKinley Farms Ltd. and 2195002 Ontario Inc. (“McKinley”), Stanley 4-7-XI Bayfield Landowners Group and Zurich Landowners Association. Cost claims were submitted by HCFA and McKinley.

On January 15, 2013, Tribute filed a letter with the Board objecting to HCFA's and McKinley's cost claims. On January 31, 2013 and February 1, 2013 HCFA and McKinley, respectively, filed their replies to Tribute's objections to their cost claims.

HCFA Cost Claims and Submissions

HCFA retained two consultants, Mr. Frederick Dutot and Mr. William Palmer and claimed a total cost award of \$28,661.12.

Mr. Dutot claimed a total of 133.2 hours for consulting services on three issues: ground water; insurance requirements; and interaction between wind turbines and underground gas storage facilities.

Tribute objected to any costs being awarded to the intervenors prior to the date of the issuance of the first Procedural Order. In addition, Tribute objected to the claim of Mr. Dutot and submitted that the costs claimed for the ground water and insurance related issues should not be awarded as these issues were addressed and resolved through the oral hearing process on the Tipperary Pools application by Tribute. Tribute agreed that the costs claimed for work related to the issue of interaction between wind turbines and underground gas storage facilities were reasonable.

Tribute proposed that the Board discount Mr. Dutot's participation by 25% (\$16,983.00 plus HST \$2,207.79 = \$19,190.79).

Regarding Mr. Palmer's cost claim of \$2,073.60 for 16 hours of consulting work, Tribute's position is that Mr. Palmer's evidence dated July 17, 2012 was not helpful to the Board and the related costs claimed should be completely disallowed. The evidence in dispute contains Mr. Palmer's comments on Tribute's responses to HCFA and Municipality of Bluewater interrogatories related to issue of impacts on industrial wind turbines (Issue 4.5 on Board approved Issues List). Tribute submitted that this evidence by Mr. Palmer was not helpful to the Board because, in Tribute's view, "... much of Mr. Palmer's Report constitutes speculation and is not relevant to the issues list set out by the Board".

Tribute submitted that Mr. Palmer's should be allowed \$1,000.00 as an appropriate cost award inclusive of HST.

In its reply to Tribute's objection, HCFA stated that Mr. Palmer's evidence was directly related to the subject interaction between the gas storage facility and the wind power and that Mr. Palmer made a deliberate attempt to keep the costs associated with the submitted report to a minimum.

McKinley's Cost Claims and Submissions

McKinley claimed costs for its legal counsel, Mr. Chinneck, and two consultants, Mr. Devitt and Mr. Mitches. The total McKinley's cost claim is \$25,680.95.

Tribute objected to any costs being awarded to the intervenors prior to the date of the issuance of the first Procedural Order. In addition, Tribute objected to the award of costs to McKinley as follows:

- Costs for majority of time claimed by McKinley should not be awarded because it relates to the Superior Court Applications and the storage rights ownership issues.
- McKinley's participation in the written hearing process was very limited.
- McKinley's counsels' time dockets prior to April 30, 2012 should not be accounted for because McKinley's involvement in the written hearing process did not commence until it began reviewing the pre-filed evidence of Tribute.
- McKinley claimed attendance at a settlement conference which Tribute claims the purpose of which related to the Superior Court applications. and should not be awarded.

Tribute did not object to Mr. Devitt's and Mr. Mitches' claims.

Tribute proposed that a total of \$9,668.10 be awarded to McKinley.

In its reply McKinley stated that all time claimed relates solely to the Board's proceeding and has nothing to do with the Superior Court Application. McKinley requested that \$25,680.95 be awarded without reduction.

Board Findings

The Board has reviewed the cost claims of HCFA and McKinley and the submissions made by the parties.

The Board finds that the appropriate cost award to HCFA is a total of **\$20,000** inclusive of HST. The Board agrees with Tribute's submission that the number of hours spent on the issues of ground water protection and insurance matters is excessive relative to the value added to an understanding of the issues in these proceedings. The Board notes that it is up to HCFA to attribute and distribute costs awarded to its consultants.

Regarding cost claims by McKinley, the Board does not find that the issuance of the first Procedural Order setting out which persons are intervenors and are eligible to make a claim for costs as determinative timing of when costs become recoverable. Such an issue must be determined on a case by case basis. In in this proceeding the Board finds that costs may be reasonably claimed after the issuance of the Notice of Application on May 10, 2011. The Board will therefore not award costs to McKinley for any activities before that date. The Board accepts McKinley's confirmation that all costs claimed by McKinley are related to the proceeding before the Board and not to court cases related to the proposed project. The Board notes that McKinley's cost claim included disbursements for courier charges of \$75.00 but the receipts were not provided for the amount of \$38.70. The Board has therefore made an adjustment to reduce the disbursements by \$38.70.

Based on the above the Board finds that the appropriate cost award to McKinley for participating in the proceeding is **\$21,540.35** including disbursements and HST.

THE BOARD THEREFORE ORDERS THAT:

1. Pursuant to section 30 of the Ontario *Energy Board Act, 1998*, Tribute Resources Inc. and Bayfield Resources Inc. shall immediately pay:
 - Huron County Federation of Agriculture \$20,000.00
 - McKinley Farms Ltd. and 2195002 Ontario Inc. \$21,540.35.

2. Pursuant to section 30 of the *Ontario Energy Board Act, 1998*, Tribute shall pay the Board's costs of and incidental to, this proceeding immediately upon receipt of the Board's invoice.

DATED at Toronto, March 13, 2013

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary